IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 76 of 1988

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
BARAI OIL INDUSTRIES - Defendant(s)

==========

Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1,
(MR PB MAJMUDAR) for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 10/08/2006

ORAL JUDGMENT

1.Though served, nobody appears on behalf of the respondent.

2.By way of this appeal, the appellant – State of Gujarat has challenged the judgment and decree passed by the learned trial Court dated 31st January, 1987 passed in

Special Civil Suit No. 1 of 1980 by which, the learned trial Court has decreed the said suit by declaring and decreeing that the entire search and seizure proceedings commenced by the Officers of the State Government as well as the Sales Tax Department on 11st December, 1979 and 28th December, 1979 at the plaintiff's oil mill are illegal, without authority and jurisdiction. The learned trial Court also further restrained the defendant – State of Gujarat, its agents, servants by permanent injunction from implementing and operating and taking any further proceedings pursuant to the search and seizure dated 11th December, 1979 and 28th December, 1979.

3. The plaintiff filed the Civil Suit No.1 of 1980 seeking declaration and permanent injunction against the defendant – State of Gujarat, as stated above. It is required to be noted that the proceedings were conducted and the premises was raided and there was a search and seizure under the provisions of the Sales Tax Act. In view of Section 64 of the Sales Tax Act; 1969, the suit before the learned Civil Court is specifically barred. Section 64 of the Sales Tax Act; 1969, reads as under :-

"64. **Bar of jurisdiction of Civil Courts.**

(1) Save as provided by Section 69.

(a) No Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal, the Commissioner or any Officer appointed to assist him is empowered to deal with or decide by or under this Act and no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in pursuance of any power by or under this Act;

(b) No assessment made and no order passed under this Act or the rules made there under by the Tribunal, the Commissioner or any Officer appointed to assist him shall be called in question in any Civil Court."

4. In view of the specific bar contained under Section 64 of the Act, no Civil Court shall have jurisdiction to deal with or decide any question which the Tribunal, the Commissioner or any Officer appointed to assist him

is empowered to deal with or decide by or under the provisions of the Sales Tax Act and no injunction shall be granted by any Civil Court in respect of any action taken or to be taken in pursuance of any power by or under the Sales Tax Act. Under the circumstances, the Civil suit filed by the defendant itself was not maintainable and the learned trial Court was not having jurisdiction to deal with the action with regard to search and seizure and the learned trial Court would not have issued any injunction. Under the circumstances, considering the provisions of Section 64 of the Act, the judgment and decree passed by the learned trial Court is nullity and without jurisdiction and is, required to be quashed and set aside.

5. For the reasons stated above, the present appeal succeeds. The judgment and decree passed by the learned trial Court dated 31st January, 1987 passed in Special Civil Suit No.1 of 1980 is hereby quashed and set aside. The appeal is allowed with costs.

[M.R.SHAH, J.]

kdc